



FEDERAL ELECTION COMMISSION
WASHINGTON, D C. 20463

Michael Sedita, Chairman
Warren County Democratic Committee
P.O. Box 415
Washington, N.J. 07882

SEP 25 2008

RE: MUR 5973
Warren County Democratic
Committee and Martha Brady, in her
official capacity as treasurer


Dear Mr. Sedita:

On February 12, 2008, the Federal Election Commission notified the Warren County Democratic Committee and Martha Brady, in her official capacity as treasurer, ("Committee") of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. On September 17, 2008, the Commission found, on the basis of the information in the complaint and information provided by you on behalf of the Committee, that there is no reason to believe that the Committee violated 2 U.S.C. §§ 433(a), 434(a) or 441i(b)(1). Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). The Factual and Legal Analysis, which explains the Commission's findings) is enclosed for your information.

If you have any questions, please contact Marianne Abely, the attorney assigned to this matter at (202) 694-1650.

Sincerely,


Audra L. Wassom
Acting Assistant General Counsel

Enclosure:
Factual and Legal Analysis

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THE FEDERAL ELECTON COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Warren County Democratic
Committee and Martha Brady,
in her official capacity as treasurer

MUR 5973

I. FACTUAL BACKGROUND

This matter arises out of a complaint alleging that the Warren County Democratic Committee ("WCDC"), which is not registered as a political committee with the Federal Election Commission ("Commission" or "FEC") and does not maintain a separate federal account, violated the Federal Election Campaign Act of 1971, as amended ("the Act"), by failing to register as a federal political committee and by using non-federal funds to pay for a postcard and a website that mention clearly identified federal candidates within 120 days of the New Jersey presidential primary election. *See* 2 U.S.C. §§ 433(a), 434(a) and 441i(b)(1).

The WCDC is registered as a political party committee with the New Jersey Election Law Enforcement Commission ("ELEC"). *See* State of New Jersey, Election Law Enforcement Commission, Campaign Financing and Disclosure Database, available at <http://elec.state.nj/us>.

On or about January of 2008, the WCDC mailed out "thousands of postcards to active, unaffiliated voters in Warren County suggesting that they come to [the] polls and vote as Democrats."¹ *See* <http://www.warrenctydems.org/> blog (last visited on August

¹ Any New Jersey resident who was registered to vote as a Democrat or as a Republican was eligible to vote on February 5, 2008 in their respective party's primary election. Registered voters who were unaffiliated were eligible to vote in the primary election after declaring a party affiliation at the polls. *Fast Facts About New Jersey's Presidential Primary*, Associated Press (Feb. 3, 2008), www.phillyburbs.com/pb-dyn/news.

11, 2008). A copy of the two-sided postcard is attached to the complaint. Attachment 1.

In addition to the recipient's name and address, the front of the postcard includes a disclaimer stating that it was "[p]aid for by the Warren County Democratic Committee, PO Box 415, Washington, NJ 07882." The front of the postcard also states:

Most likely, a Democrat will be elected President this November. On February 5, 2008, New Jersey Primary Voters will cast their ballots for the next President of the United States. Don't be left out. Go to the polls on primary election day and say "I want to vote as a Democrat!" (emphasis in original) Bring this card with you as a reminder. For more information, e-mail info@wcdems.org or call 908-752-5426.

The back side of the postcard also urges the recipient to vote on February 5, 2008 in the New Jersey Democratic presidential primary, stating, "Who Will Be Our Next President? Vote February 5th, 2008 NJ Democratic Presidential Primary Don't Let Someone Else Choose For You." To the left of the text, it lists the eight Democratic candidates.

In response to the complaint, the respondents indicated that the total cost for preparing and mailing the postcard at issue was "approximately \$1,500" and was funded entirely by "contributions raised by the WCDC." We invited the respondents, if they chose, to identify the specific source of the "contributions" used to fund the activity and provide supporting information for its assertion as to the cost of preparing and distributing the subject postcard. The respondents subsequently clarified this information, stating that the total cost of preparing and distributing the postcard was \$813.41. The WCDC's 2007 Q4 (10/15/07 – 12/31/07) New Jersey state disclosure report indicates that the committee made disbursements totaling \$388.44 for the printing and mailing of "affiliation drive postcards." The 2008 Q1 (1/1/08 – 3/31/08) report

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discloses a \$25.00 disbursement for design of the postcards and in-kind contributions totaling \$399.97 in the form of labels, lists and mailing for "voter affiliation cards." See State of New Jersey, Election Law Enforcement Commission, Campaign Financing and Disclosure Database, available at <http://elec.state.nj.us> (hereinafter ELEC Database). A review of the WCDC's ELEC reports for 2007 and 2008 indicates that the subject postcard was the only activity the committee financed in connection with a federal election during those calendar years. During this time period, the WCDC made contributions exclusively to local candidate committees and, apart from the subject postcard, made expenditures only on behalf of local candidates or for the purpose of participating in party events. *Id.*

The subject postcard does not actually direct the recipient to the WCDC's website, but instead provides those seeking further information with the Committee's e-mail address and telephone number. However, as alleged in the complaint, the WCDC does sponsor a website through which it promotes federal, as well as, state candidates. For instance, in January 2008, when the subject postcard was distributed, the website's content included blog postings promoting Congressman Frank Pallone's appearance at the Fall Victory Celebration and highlighting the "horserace" between presidential primary opponents Senators Barack Obama and Hillary Clinton. <http://warrenctydem.org/blog/index> (last accessed August 11, 2008). In addition to the blog, which was written by Sedita, the publicly available portion of the WCDC's website currently includes subpages devoted to local party events, candidates, fundraising and

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Democratic party news and events.² *Id.* ELEC reports indicate that, beyond paying nominal sums for server space and other online fees, the website's content was managed by volunteers. For instance, in calendar year 2008, the WCDC paid \$9.99 per month for website hosting. *See* ELEC Database.

II. LEGAL ANALYSIS

A. Political Committee Status

The complaint asserts that the subject postcard and those portions of its website that promote federal candidates were unlawful expenditures and, as a result, the WCDC is required to register and report to the Commission as a federal political committee. *See* 2 U.S.C. §§ 431(4), 433(a) and 434(a). The WCDC's response contends that the mailing at issue was a slate card sent to unaffiliated voters in Warren County in an effort to persuade those Warren County voters "to affiliate as Democrats." The respondents contend that because the costs incurred by a local committee of a political party in the preparation and distribution of a printed slate card consisting of three or more candidates is not considered a contribution or expenditure it is not required to register and report as a federal political committee. *See* 2 U.S.C. §§ 431(8)(B)(v) and (9)(B)(iv).

Local party committees are not automatically required to register with the

² In order to access the full features of the WCDC's website, including opting-in to the committee's e-mail list, visitors were required to register with the website. *See* <http://www.warrenctydemns.org> (last accessed August 11, 2008). The WCDC also has a second registered website, which appears to have the same content. *See* <http://www.warrenctydemns.com> (last accessed August 11, 2008).

Commission as federal political committees.³ A local party committee becomes a political committee for purposes of the Act when its activity in connection with a federal election exceeds one of three registration thresholds. 2 U.S.C. § 431(4)(C), 11 C.F.R. § 100.5(c). First, registration as a federal political committee is required when a local party committee makes more than \$1,000 in contributions or expenditures during a calendar year. 2 U.S.C. § 431(4)(C), 11 C.F.R. § 100.5(c). Second, registration as a federal political committee is required if the local party committee raises more than \$5,000 in contributions. Funds specifically solicited or donated to the local party committee for the purpose of influencing federal elections count against this threshold and are subject to federal limits and prohibitions. *Id.* Third, a local party committee must register as a federal political committee if it spends more than \$5,000 on exempt party activities. *Id.*; 2 U.S.C. §§ 431(4)(C), (8)(v) and (9)(iv). Exempt party activities include slate cards, sample ballots, palm cards or other printed lists naming candidates for any public office, including federal office. 2 U.S.C. §§ 431(8)(B)(v) and (9)(B)(iv); 11 C.F.R. §§ 100.80 and 100.140. Should a local party committee achieve federal political committee status by exceeding any of these three thresholds, it has ten days to register with the FEC (FEC Form 1) and begin disclosing its financial activities. 2 U.S.C. §§ 433(a) and 434(a); 11 C.F.R. §§ 102.1(d) and 104.1.

³ As a general matter, the Act defines a "political committee" as any committee, club, association or other group of persons that receives "contributions" or makes "expenditures" for the purpose of influencing a federal election which aggregate in excess of \$1,000 during a calendar year. 2 U.S.C. § 431(4)(A), 11 C.F.R. § 100.5(a). The term "contribution" includes any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal Office. 2 U.S.C. § 431(8)(A)(i). The term "expenditure" includes any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for federal office. See 2 U.S.C. § 431(9)(A)(i).

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The WCDC did not trigger federal political committee status as a result of the activities at issue in this matter. The available evidence indicates that, between December 12, 2007 and January 25, 2008, the WCDC disbursed \$813.41 in the preparation and mailing of the subject postcard, which is below the monetary registration thresholds required to achieve federal political committee status for a local party committee. 2 U.S.C. § 431(4)(C), 11 C.F.R. § 100.5(c). Given that we have determined that the WCDC is not federal political committee on this basis, we need not specifically address the respondents' claim that the WCDC's postcard is exempt from the definition of contribution and expenditure under the slate card exemption. 2 U.S.C. §§ 431(8)(v) and (9)(iv); 11 C.F.R. §§ 100.80 and 100.140.

Further, it does not appear that the WCDC's website activities triggered federal political committee status. Permissible Internet activities include, but are not limited to, sending or forwarding electronic mail, providing a hyperlink to a web site, creating, maintaining or hosting a website and paying a nominal fee for the use of a website. 11 C.F.R. § 100.94(b). *See Internet Communications*, 71 Fed. Reg. 18590 (April 12, 2006). In fact, local political party committees and their agents are specifically permitted to post generic campaign messages and even refer to or feature federal candidates on committee websites as part of an effort to promote party policies and candidates without violating the Act. *Internet Communications*, 71 Fed. Reg. 18597, 18598. (April 12, 2006) (a political party committee's website is not a form of "public communication" under the Act, including within the context of federal election activity). *See* 2 U.S.C. § 431(22) and 11 C.F.R. § 100.26. Therefore, the WCDC's promotion of federal candidates on its website did not result in violations of the Act.

Accordingly, the Commission finds no reason to believe that the Warren County Democratic Committee and Martha Brady, in her official capacity as treasurer, violated 2 U.S.C. §§ 433(a) and 434(a).

B. Federal Election Activity

Regardless of whether a local party committee exceeds one of the registration thresholds making it a federal political committee, it must finance activities in connection with federal elections with funds that comply with the federal contribution limits and prohibitions. 11 C.F.R. § 102.5(b). The complaint alleges that the WCDC's use of federal candidates' names on the subject postcard as well as its promotion of federal candidates on its website constituted federal election activity within 120 days of an election, which should have been paid for with federal dollars. *See* 2 U.S.C. § 431(20)(A), 11 C.F.R. § 100.24. The response states that what it termed a slate card was not federal election activity directed at influencing the outcome of the New Jersey presidential primary election. The respondents contend that the WCDC's slate card did not impact the outcome of the primary election because it did not favor one Democratic candidate over another as it listed all eight candidates equally. Additionally, the respondents assert that, because only registered Democrats could vote in that party's primary, there was no effort to favor Democratic candidates over Republican candidates.

Federal election activity ("FEA") includes: (1) voter registration activities conducted during a period beginning 120 days before the date of a regularly scheduled federal election and ending on the date of the election; (2) voter identification, get-out-the-vote or generic campaign activity conducted in connection with an election where a

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federal candidate appears on the ballot;⁴ (3) public communications referencing a clearly identified federal candidate which promote, support, attack, or oppose the candidate; and (4) services provided by a state party employee who devotes over 25% of his or her time during a given month to activities in connection with a federal election. 2 U.S.C.

§ 431(20)(A), 11 C.F.R. § 100.24. Nonfederal funds may not be used to pay for FEA.

2 U.S.C. § 441i(b)(1).

A public communication includes communications "by means of any broadcast, cable or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing or telephone bank to the general public, or any other form of general public political advertising, but does not include communications over the Internet." 2 U.S.C.

§ 431(22), 11 C.F.R. § 100.26.⁵ A mass mailing means a mailing by United States mail or facsimile of more than 500 pieces of mail matter of an identical or substantially similar nature within any 30-day period. 2 U.S.C. § 431(23), 11 C.F.R. § 100.27. A public communication must be funded solely with federal funds. 2 U.S.C. § 441i(b), 11 C.F.R. § 300.33(c).

A local party committee that is not a federal political committee engaging in FEA is required to maintain appropriate records for Commission review. These committees must demonstrate through a reasonable accounting method that whenever it makes a payment of federal funds for FEA that it has received sufficient funds subject to the limitations and prohibitions of the Act to make the payment. These committees are also

⁴ The subject postcard does not qualify as get out the vote ("GOTV") activity because it did not provide recipients of the postcard with information such as when polling places would be open, the location of particular polling places and offers of transportation to the polls. 11 C.F.R. § 100.24(a)(3)(i) and (ii).

⁵ Thus, as previously stated, the WDCD's website activities do not constitute FEA.

required to keep records of the funds received and expended in this activity and shall make such records available for examination by the Commission. 11 C.F.R. § 300.36.

According to the evidence, the WCDC's postcard, which referenced eight clearly identified federal candidates, was mailed via United States mail to more than 500 residents of Warren County, New Jersey. Thus, the WCDC's postcard meets the definition of "public communication" under 11 C.F.R. § 100.26 and, therefore, constitutes FEA. The available evidence indicates that the WCDC financed the subject postcard with federally permissible funds. As stated *supra* at 2 and 3, the committee's 2007 Q4 and 2008 Q1 ELEC reports indicate that the subject postcard cost a total of \$813.41. Applying a standard FIFO (first in, first out) analysis based on the dates of receipts and disbursements disclosed on the WCDC's 2007 Q4 and 2008 Q1 ELEC reports, it appears that the subject postcard was paid for entirely with funds subject to the limitations and prohibitions of the Act.

Accordingly, the Commission finds no reason to believe that the Warren County Democratic Committee and Martha Brady, in her official capacity as treasurer, violated 2 U.S.C. § 441i(b)(1) and 11 C.F.R. § 300.33(c).

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